IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 16-07-2009

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

Writ Petition No.49559 of 2006
(O.A.No.1275 of 2001)

1.J.Thompson Thangaraj
2.T.Sobhanam
3.K.Sukumaran Nair
4.C.Jebamony .. Petitioner.

Versus

1.The State of Tamil Nadu
rep. by Secretary to Government,
Public Works Department,
Fort St. George, Chennai-9.

2.Engineer-in-Chief (WRO) &
Chief Engineer (Genl)
Public Works Department,
Chepauk, Chennai-5.

3.The Accountant General
(Accounts & Entitlements),
Tamil Nadu, Chennai-600 018.

4.Executive Engineer,
(Public Works Department),
Water Resources Organisation,
Kodayar Basin Division,
Nagercoil. .. Respondents.

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Prayer: Original Application No.1275 of 2001 filed before the Tamil Nadu Administrative Tribunal, on abolition, transferred to the file of this Court and renumbered as Writ Petition No.49559 of 2006, seeking for a writ of Certiorarified Mandamus, to call for the records of the 4th respondent in his proceedings No.3736/99/EC1/CR, dated 13.12.1999 and quash the order passed therein, and direct the respondents to grant all consequential benefits to the petitioners.

For Petitioners : Mr.M.Vivekanandhan

For Respondents : Ms.S.Anitha
Government Advocate

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O R D E R

Heard the learned counsel appearing for the petitioners and the learned Government Advocate appearing for the respondents.

2. The petitioners had been appointed, originally, in the Non-provincialised Work-charged Establishment, in various posts, like Work Superintendent, Maistry and Work Superintendent etc. Later, the said posts had been re-designated as Work Inspector. Based on a Government Order, in G.O.Ms.No.95, Public Works Department, dated 9.1.1971, the services of the petitioners had been provincialised, with effect from 24.11.1970, as Work Inspectors Grade-I, and they were drawing the pay of Work Inspector Grade-I, on the date of provincialisation. Therefore, in accordance with Memorandum No.19918/R-2/71-12, dated 29.11.1971, the services of the petitioners were provincialised in the posts held by them, as on 24.11.1970, even if they had not completed five years of service in their posts. Thereafter, the Government had approved the time scales of pay for the Provincialised Work-charged Establishment members, under G.O.Ms.No.142, Public Works Department, dated 3.2.1973. In Annexure-II to the said Government Order, the various posts were merged into single categories. While doing so, the posts of Maistry Grade-I , Work Superintendent, Work Inspector, Technical Assistant etc., were wrongly brought under the category of Inspector Grade-II. As such, it amounted to reduction in rank and status. In fact, the Government Memorandum, dated 29.11.1971, had already given protection for the posts held by the petitioners and therefore, they could not be reduced in rank to Grade-II. Further, G.O.Ms.No.142, Public Works Department, dated 3.2.1973, had also given pay protection, in Paragraphs 6 and 7 of the said Government Order and hence, categorising them as Work Inspector Grade-II, is erroneous.

3. It has been further stated that the Government Order in G.O.Ms.No.142, Public Works Department, dated 3.2.1973, was followed by a memorandum No.43021/Z-2/73-2, dated 17.3.1973, declaring that those persons, who were having less than 10 years of service would be categorised as Work Inspectors Grade-III. Those with 10 to 20 years of service would be categorised as Grade-II and those with 20 years or more years of service would be categorised as Grade-I. However, there was no one in the entire State of Tamil Nadu, who could have completed 20 years of service, as on 24.11.1970. Thus, the said memorandum was contrary to the Government orders which had given post and pay protection to the petitioners. While so, the fourth respondent had passed an order, dated 13.12.1999, based on a letter issued by the third respondent, cancelling the earlier orders passed in favour of the petitioners, in effect, cancelling the selection and special grades already fixed in their favour. Since the said order would result in the recovery of the pensionary and terminal benefits of the petitioners they had challenged the said order in 3736/99/EC1/CR, dated 13.12.1999, issued by the fourth respondent.

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4. The main contention of the learned counsel for the petitioners is that the earlier orders passed in 1997 were based upon

the orders of the first and second respondents. The fourth respondent is not entitled to cancel the said orders, merely based on the letter of the third respondent. The impugned order of the fourth respondent is violative of the principles of natural justice, since no opportunity was given to the petitioners and no notice had been issued to them before the said order had been passed. The impugned order creates discrimination amongst, similarly placed persons and therefore, it is violative of Articles 14 and 16 of the Constitution of India.

5. No reply affidavit has been filed on behalf of the respondents.

6. Since the main contention of the learned counsel for the petitioners is that the fourth respondent had passed the impugned order, dated 13.12.1999, in violation of the principles of natural justice and since no notice had been issued to the petitioners and no opportunity had been given to them to put forth their case before the said order had been passed and as there is no reply from the respondents contesting the said claim made on behalf of the petitioners, the impugned order of the fourth respondent, dated 13.12.1999 is set aside, in so far as the petitioners are concerned. However, it is made clear that it would be open to the respondents to refix the grades and the pay scales of the petitioners, if they deem it fit to do so, after giving them an opportunity of hearing. The writ petition is disposed of with the above directions. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

csh

To

1. The Secretary to Government,
State of Tamil Nadu
Public Works Department,
Fort St. George, Chennai-9.

2.Engineer-in-Chief (WRO) &
Chief Engineer (Genl)
Public Works Department,
Chepauk, Chennai-5.

3.The Accountant General
(Accounts & Entitlements),
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4.Executive Engineer,
(Public Works Department),
Water Resources Organisation,
Kodayar Basin Division,
Nagercoil.

1 cc To Mr.M.vivekanandhan, Advocate, SR.31574.

Writ Petition No.49559 of 2006

GGK(CO)
RVL 21.08.2009

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